

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

vs.

Case No. 2006-362-FH

JACKIE VERNON SAUNDERS,

Defendant.

OPINION AND ORDER

Defendant has filed a motion to quash count I, home invasion second degree and count II, possession of burglary tools.

Following a preliminary examination held on January 25, 2006, in the 38th District Court, before the Hon. Norene S. Redmond, defendant was bound over to this Court to stand trial for one count of home invasion second degree, MCL 750.110a(3), one count of possession of burglary tools, MCL 750.116, and to being a habitual offender, fourth offense, MCL 769.12. On May 30, 2006 defendant filed a motion to quash.

The decision to bind a defendant over is reviewed for abuse of discretion. *People v Beasley*, 239 Mich App 548, 552; 609 NW2d 581 (2000). To bind a defendant over for trial there must be probable cause to believe a crime was committed and defendant committed it. MCL 766.13; MCR 6.110(E). In reviewing a district court's decision to bind a defendant for trial, a circuit court must consider the entire record of the preliminary examination, and it may not substitute its judgment for that of the magistrate. *Beasley, supra*. Reversal is appropriate only if it appears on the record that the district court abused its discretion. *Id.*



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The purpose of a preliminary hearing is to determine whether there is probable cause to believe a crime was committed and that the defendant committed it. MCR 6.110. See also, *People v Perkins*, 468 Mich 448; 662 NW2d 727 (2003). Probable cause requires a reasonable belief that the evidence presented during preliminary examination is consistent with defendant's guilt. *People v Northey*, 231 Mich App 568, 575; 591 NW2d 227 (1998). Although proof beyond a reasonable doubt is not required at a preliminary examination, the prosecution must present evidence on each element of the crime charged or evidence from which these elements may be inferred. *People v Giddings*, 169 Mich App 631, 633; 426 NW2d 732 (1988). Circumstantial evidence, coupled with those inferences arising therefrom, is sufficient to establish probable cause to believe that the defendant committed a felony. *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997).

The January 25, 2006 preliminary examination established on January 11, 2006 Nicole Cole ("Cole") witnessed defendant attempt to enter a neighbor's home located on Stricker Street through several doors and windows. *Preliminary Hearing Transcript*, dated January 25, 2006, p 6-7. Cole testified she viewed defendant remove a type of bar from his duffel bag, pry open the window, and crawl through it. *Id.* at 7. Defendant's upper body was inside the home while his legs were hanging outside. *Id.* at 9. A mail carrier approached the home and defendant left. *Id.* at 7. Officer Jason Gibson testified he made contact with defendant near the home, ordered him to the ground, and questioned him. *Id.* at 20. Defendant admitted he attempted to break into the home to steal items for drugs. *Id.* at 20-21. Officer Gibson arrested defendant, searched the duffel bag, and discovered a pry bar and flashlight. *Id.* at 21.

Defendant contends the people failed to demonstrate he completed the act of entering a dwelling. According to defendant, the owner had recently deceased and no one resided in the

home. In addition, defendant argues that a crowbar is an ordinary tool and the people did not establish specific intent to employ it as a burglar's tool. The people disagree and argue even temporary use creates a dwelling for purposes of the statute. Further, the people contend intent to utilize the bar as a burglar's tool is inferred from the circumstances.

The Court will first address count I, home invasion second degree. A person who breaks and enters or enters without permission a dwelling with intent to commit or does commit a felony, larceny, or assault is guilty of home invasion in the second degree. MCL 750.110a(3). Pursuant to MCL 750.110a(1)(a), a "dwelling" is defined as "a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter." A residence does not need to be occupied when the crime takes place in order to be defined as an occupied dwelling. *People v Hider*, 135 Mich App 147, 151; 351 NW2d 905 (1984). The duration of an absence does not matter; rather, it is the intent to return to the residence that controls. *Id.* at 151-152.

Here, Joyce Bauhof ("Bauhof") testified that she resides half the time at the home located on Stricker Street and half the time in another home. *Preliminary Hearing Transcript*, dated January 25, 2006, p 34-35. Bauhof stated her mother, also a resident of the home, passed away in December 2005. *Id.* at 35. Bauhof indicated she was the beneficiary, executor of the will, had an ownership interest in the home, and was in charge of the home at the time of the alleged incident. *Id.* at 32. She admitted that a probate estate was not opened at the time. *Id.* at 34. Although Bauhof was not in the home at the time of the crime, she was on her way to the home. *Id.* at 32. The testimony demonstrates Bauhof resided in the home at least half of her time, intended on returning to the home, and had an ownership interest in the home. The evidence establishes probable cause that the home was a dwelling for purposes of the statute.

Further, defendant asserts the people did not establish entry of the dwelling. An "entering" occurs when the whole or any part of the body, hand, or foot enters into the interior of an enclosed area. *People v Burrows*, 73 Mich App 51, 56; 250 NW2d 789 (1976). In *People v Gillman*, 66 Mich App 419, 429-430; 293 NW2d 396 (1976), the court found that entering is accomplished when any part of defendant's body is introduced into the house. If a defendant stuck his arms through a window this would constitute entry. *Id.* at 430. Here, the testimony demonstrates defendant's upper body went through the window into the home, therefore an entry was established. *Preliminary Hearing Transcript*, dated January 25, 2006, p 9. Accordingly, there is sufficient evidence to support the charge of home invasion second degree and defendant's motion to quash is denied.

Next, the Court will address count II, possession of a burglary tool. Possession of burglary tools requires proof that defendant possessed tools adapted or designed for breaking and entering, that defendant had knowledge that tools were adapted and designed for that purpose, and that defendant possessed them with intent to use them for breaking and entering. MCL 750.116; *People v Wilson*, 180 Mich App 12, 16; 446 NW2d 571 (1989). This is a specific intent crime and it must be shown that the defendant intended to employ the tools for the illegal purpose. *People v Rigsby*, 92 Mich App 95, 97; 284 NW2d 499 (1979).

Here, the record demonstrates that Cole witnessed defendant use the bar to pry open a window of the home. *Preliminary Hearing Transcript*, dated January 25, 2006, p 7. Officer Gibson made contact with defendant near the home and discovered a bar in his possession. *Id.* at 19, 21. Officer Gibson observed marks on the window that were consistent with marks created by the bar found in defendant's possession. *Id.* at 22. This evidence demonstrates probable cause that defendant had the specific intent to employ the tool for an illegal purpose. As a result,

there is sufficient evidence to support the charge of possession of burglary tools and defendant's motion to quash is denied.

Based upon review of the record, defendant's motion to quash the charges of home invasion second degree and possession of burglary tools is DENIED.

IT IS SO ORDERED.

Dated: August 7, 2006

DONALD G. MILLER
Circuit Court Judge

CC: Vicki P. Walsh
Assistant Prosecuting Attorney
N. Eugene Hunt

DONALD G. MILLER
CIRCUIT JUDGE

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GARMELLA SABAUGH, COUNTY CLERK

BY:  Court Clerk